IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.07.2007

CORAM:
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. Nos.12826 and 12827 of 2007
and
M.P. Nos.1 & 2 of 2007

Sun TV Limited
367/369 Anna Salai
Teynampet
Chennai - 600 018 Petitioner in both W.Ps.

vs.

1 Tata Sky Limited
264, Okhla Industrial Estate Phase III
New Delhi - 110 020

2 The Telecom Disputes Appellate Tribunal
represented by its Registrar
New Delhi Respondents in both W.Ps.

Prayer in W.P. Nos.12826 & 12827 of 2007

Writ Petitions filed under Article 226 of the Constitution of India for issuance of writs of certiorari 1] calling for the records of the Second Respondent pertaining to E.A.No.3/2007 dated 03.04.2007 and to quash the same (WP.No.12826/07) and 2] calling for the records of the Second Respondent in petition No.291 (C) of 2006 dated 19.03.2007 and to quash the same ; respectively.

For petitioner in both the writ petitions — Mr. P.S. Raman, Senior Advocate for Mr. P. Wilson

For 1st respondent in W.P. No.12826 of 2007 — Mr. A.L. Somayaji Senior Counsel for M/s.S. Ramasubramanian & Assts.

For 1st respondent in W.P. No.12827 of 2007 — Mr. Habibullah Badsha, Sr. Counsel for M/s. S. Ramasubramanian & Assts.

COMMON ORDER

While W.P. No.12827 of 2007 has been filed challenging the order dated 19.03.2007 passed by the second respondent in Petition No.291 (C) of 2006 and to quash the same, W.P. No.12826 of 2007 has been filed seeking to quash the order dated 03.04.2007 passed by the second respondent in E.A. No.3 of 2007.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

2 Since the facts involved in these two writ petitions are same, they are decided by this common order and the facts which are necessary for consideration, are as under:

a TATA Sky Limited ("TATA" for short), the first respondent herein had filed a petition under Section 14 of the Telecom Regulatory Authority Act of India, 1997 in Petition 291(c) before the Telecom Dispute Appellate Tribunal (in short "the Tribunal), the second respondent herein seeking the relief of declaration that Sun TV Limited (in short "Sun TV"), the petitioner herein, is a defaulter in terms of Government of India order dated 01.06.2005 for having refused access of the channels on a non-discriminatory basis to TATA as laid down in the applicable regulation of TRAI and for a direction to Sun TV to discharge the statutory obligations under the interconnection regulation of TRAI dated 10.12.2004 to provide signals of its channels to TATA on the reasonable terms and conditions.

b It was stated in the counter-affidavit filed by Sun TV that it owns about 11 channels and its group companies viz., Gemini TV Pvt. Ltd. and Udaya TV Ltd. own 5 and 4 channels respectively and these Companies have authorized "Channel Plus" a unit of Kal Com Pvt. Ltd. to licence the said channels for broadcast distribution on DTH platform; in the absence of fixation of rate by the TRAI, TATA should pay the rate fixed by Sun TV and there was no cause of action for TATA to approach the Tribunal; as per 3.6 of the Telecom Interconnection Regulation Act, 2004, the broadcaster has to provide TV signals or turn down the request and such denial of request will enable the distributor to agitate the matter in the appropriate forum and there is no denial of request on the part of Sun TV as in fact, TATA had been asked to meet the concerned person in the office of Sun TV and none of TATA's people has met the Sun TV in-charge; the cable TV rate for 14 channels as declared to TRAI is Rs.83.67 per subscriber per month and not Rs.25/- per subscriber per month and that of Sun Network adds up to Rs.119/- per subscriber per month; TATA had created some documents as if a proposal had been sent to Sun TV, a term sheet had been handed over to Sun TV and a draft agreement also had been submitted to Sun TV and at no point of time, there was any discussion between Sun TV and TATA regarding of supply of channels though the former had addressed several letters to the latter to negotiate with its one Hansraj Saxena, the person in-charge.

c As per the order dated 21.11.2006 passed by the Tribunal that a meeting for amicable settlement be held on 24.11.2006, a meeting was held between the parties at Chennai on 24.11.2006 during which meeting, Sun TV informed TATA that signals of 20 channels of Sun TV group pending fixation of rates would be provided at the rate of Rs.85/- to the subscriber per month and this was not acceptable to TATA.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

d On 24.01.2007, for TATA's request to pass an interim order in the petition, the Tribunal held that it cannot be acceded to due to the diversity of the stand between Sun TV and TATA. Aggrieved by the non-granting of an interim order, TATA filed a writ petition before the Delhi High Court seeking issuance of a writ of mandamus to the Tribunal to grant interim relief. In the meanwhile, since the Tribunal felt it difficult to pass final orders due to certain reasons, it insisted upon the counsel to place their arguments for an interim prayer and after hearing the arguments of both sides, it passed the order dated 19.03.2007 granting the interim prayer sought by TATA to the following effect:

> ". . .Therefore, as an interim measure, we direct the respondent to make available signals of all its channels to the petitioner on a-la-carte basis at 50% of its declared rates. It is made clear that view expressed in this order is only for purposes of passing this interim order and it is not an expression of final opinion on the controversy between the parties in this case."

e As against the above interim prayer granted by the Tribunal, a Review Petition had been filed by Sun TV which was not taken on file by the Tribunal and instead, as per the direction of the Tribunal, Sun TV had filed a modification petition. This being the position, the Tribunal took up E.P. No.3 of 2007 filed by TATA to execute the interim order and ordered Sun TV to implement the interim order within a period of three days, defeating the purpose for which the modification petition was filed.

3 Questioning the legality of the above two orders of the Tribunal, one in Petition No.291 (C) of 2006 dated 19.03.2007 grating an interim order and the other in E.A. No.3 of 2007 dated 03.04.2007 directing Sun TV to implement the said interim order within a period of three days, the present writ petitions have been filed by Sun TV.

4 This Court, on 05.04.2007, admitted the writ petitions and passed an order of interim stay of the impugned order dated 19.03.2007.

5 Mr. P.S. Raman, learned Senior Counsel appearing for the petitioner has contended that:

a when a writ petition filed by the first respondent before the Delhi High Court challenging the order dated 24.01.2007 of the Tribunal is pending, the Tribunal ought not to have passed the interim order in P. No. 291 (C) of 2006, particularly because of its own rejection of the interim order and the fact that the principle of res judicata estops it from passing the same;

b by passing the impugned order in Execution Application directing Sun TV to implement its order within three days, the Tribunal had made the modification petition filed by Sun TV infructuous;

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

6 With regard to his contention that a part of cause of action has arisen in Chennai by virtue of the fact that the first meeting towards settlement was held in Chennai as per the direction of the Tribunal and that is sufficient to maintain this writ petition on the aspect of territorial jurisdiction, the learned Senior Counsel for the petitioner has placed reliance on a judgment of the Supreme Court reported in (2006) 6 SCC 207 in the case of Om Prakash Srivastava vs. Union of India and another: (para 8)

> "Two clauses of Article 226 of the Constitution on plain reading give clear indication that the High Court can exercise power to issue direction, order or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action wholly or in part had arisen within the territories in relation to which it exercises jurisdiction notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories."

7 On the above aspect, further reliance has been placed by the learned counsel for the petitioner on a decision of the Supreme Court reported in AIR 2000 SC 2966 in the matter of Navinchandra N. Majithia vs. State of Maharashtra (para 7)

> "Thus, the power conferred on High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which "the cause of action, wholly or in part, arises" and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment is thus aimed at widening the width of the area for reaching the writs issued by different High Courts."

8 Mr. P.S. Raman, learned Senior Counsel has placed further reliance on the above aspect on a decision of the Supreme Court reported in (2004) 6 SCC 254 in the matter of Kusum Ingots and Alloys Limited vs. Union of India and another: (para 10)

> "Keeping in view the expressions used in clause (2) of Article 226 of the Constitution of India , indisputably even if a small fraction of cause of action accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9 The learned Senior Counsel appearing for the petitioner has finally contended that the Tribunal has erred in granting an order at the interim stage which tantamounts to granting of a final order and on this ground, the impugned order dated 19.03.2007 has to be quashed. In this regard, he has placed reliance on a Division Bench judgment of this Court reported in 2007 (3) CTC 11 in the matter of the Bank of Tokyo Mitsubishi Limited, Mumbai vs. Spartex Ceramics India Limited and others (para 16)

> "14. From a reading of the above-referred catena of judgments and taking an overall view of the matter, we find that there is no such circumstances warranting the learned Single Judge to give a finding to the effect that the shares are standing in the name of the second plaintiff and were not transferred and therefore, prima facie they belong to the second plaintiff and thus, the plaintiffs have right for an interim injunction against the second defendant also not to deal with the shares, pending disposal of the suit. Similarly, there is no warranting circumstance for the learned Single Judge to direct the appellant herein to deposit the original share certificate in this Court. These reliefs granted by the learned Single Judge at the interim stage is nothing but the prayer in the Suit itself which has to be considered only at the ultimate stage of final decree. We are, therefore, of the considered opinion that the learned Single Judge, without going into the legal proposition involved in this regard, has granted the main relief itself which is sought in the suit at the interim stage, which in other words, tantamounts to a pre-trial decree.
>
> 15. As for the reliance placed by the counsel for the appellant on the decision of the Supreme Court reported in Allahabad Bank vs. Canara Bank and another, 2000 (2) CTC 723:2000 (4) SCC 406, we do not deem it necessary to go into the same at this stage as the challenge is only with regard to the validity of the orders of the learned Single Judge passed in the Interim Applications.
>
> 16. Having regard to the facts and circumstances of the case, the discussion made above and also the various rulings cited, we are of the considered opinion that the interim orders passed by the learned Single Judge in Application Nos. 42 and 280 of 2000 suffer from legal infirmity

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

as stated above and as such, do not have legs to stand. In that view of the matter the interim orders which are impugned in these Appeals are quashed and the Appeals are accordingly allowed without any order as to costs."

10 Mr. Habibullah Badsha, learned Senior Counsel appearing for the first respondent, at the outset, has vehemently argued that this Court does not have any territorial jurisdiction over the Tribunal since the latter is in New Delhi. In support of this contention of his, he has relied on a judgment of the Supreme Court reported in AIR 1997 SC 1125 in the matter of L. Chandra Kumar vs. Union of India and others: (para 91)

> "Having regard to both the afore-said contentions, we hold that all decisions of Tribunals whether created pursuant to Article 323A or Article 323B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls."

11 Further reliance has been placed by Mr. Habibullah Badsha, learned Senior Counsel, on a decision of the Supreme Court reported in (2004) 9 SCC 786 in the matter of National Textile Corporation Ltd. and others vs. Haribox Swalram and others (para 12)

> ". . .As discussed earlier, the mere fact that the writ petitioner carries on business at Calcutta or that the reply to the correspondence made by it was received at Calcutta is not an integral part of the cause of action and, therefore, the Calcutta High Court had no jurisdiction to entertain the writ petition and the view to the contrary taken by the Division Bench cannot be sustained. In view of the above finding, the writ petition is liable to be dismissed. . ."

WEB COPY

12 Secondly, Mr. Habibullah Badsha, learned Senior Counsel has contended that the petitioner has accepted and agreed to act upon the order dated 19.03.2007 in its various applications filed after the passing of the said order and furthermore, by filing Modification Application, only a small portion of the interim order passed by the Tribunal was sought to be modified and as such, the petitioner is estopped from challenging the interim order passed by the Tribunal.

13 Thirdly, the learned Senior Counsel for the first respondent has contended that the writ petition filed by the first respondent has been withdrawn on 13.03.2007 which is much prior to the passing of the

https://hcservices.ecourts.gov.in/hcservices/

impugned interim order and hence, the allegation of the petitioner that the first respondent has instituted parallel proceedings cannot stand.

14 Mr. Habibullah Badsha, learned Senior Counsel, in support of his contention that the principle of res judicata does not play any role in this case since the order of the Tribunal is only interim in nature and the said principle is applicable only in respect of final orders, has relied on a judgment of the Supreme Court reported in AIR 1960 SC 941 in the matter of Satyadhyan Ghosal and others vs. Smt. Deorajin Debi and another (paras 8 & 16)

> "The principle of res judicata applies also as between two stages in the same litigation to this extent that a court , whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the mater again?
>
> It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order. A special provision was made as regards orders of remand and that was to the effect that if an appeal lay and still the appeal was not taken the correctness of the order of remand could not later be challenged in an appeal from the final decision. If however an appeal did not lie from the order of remand the correctness thereof could be challenged by an appeal from the final decision as in the cases of other interlocutory orders. The second sub-section did not apply to the Privy Council and can have no application to appeals to the Supreme Court, one reason being that no appeal lay to the Privy Council or lies to the Supreme Court against an order of remand."

15 On the above aspect, the learned Senior Counsel has further relied on a judgment of the Supreme Court reported in (2002) 7 SCC 447 in the matter of C.V. Rajendran and another vs. N.M. Muhammed Kunhi (paras 4 & 5)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"Mr. P.P. Rao, learned Senior Counsel, appearing for the appellants contends that the order passed by the Appellate Authority holding that the eviction petition was maintainable and that Section 15 of the Act was not a bar, does not operate as res judicata. In support of his contention, the learned Senior Counsel relies upon a judgment of this Court in Satyadhyan Ghosal v. Deorajin Debi.

We have perused that judgment. It is laid down therein that an interlocutory order which did not terminate the proceedings and which had not been appealed against either because no appeal lay or even though an appeal lay, an appeal was not taken, could be challenged in an appeal from the final decree or order. It was observed that interlocutory judgments which have the force of a decree must be distinguished from other interlocutory judgments which are a step towards the decision of the dispute between the parties by way of a decree or a final order. In that case, the question of applicability of Section 28 of the original Thika Tenancy Act, 1949 was held to be interlocutory in nature, falling in the latter category."

16 As contended by Mr. Habibullah Badsha, learned Senior Counsel, Mr. A.L. Somayaji, learned Senior Counsel appearing for the first respondent in W.P. No.12826 of 2007 also has contended that res judicata would come into force only in respect of final orders as per Section 11 of the Civil Procedure Code and since the order passed by the Tribunal is only an interim one, the impugned order is not hit by res judicata. In this regard, reliance has been placed by him on a decision of the Supreme Court reported in AIR 1964 SC 993 in the matter of Arjun Singh vs. Mohindra Kumar and others (para 13)

"It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

or new situations which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of res judicata does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of the court would be justified in rejecting the same as an abuse of the process of Court."

17 Mr. A.L. Somayaji, learned Senior Counsel for the first respondent, to substantiate his argument that no cause of action has arisen in Chennai and that a Court would have territorial jurisdiction only if there is at least a part of cause of action, has relied on a judgment of the Supreme Court reported in [2007] 136 Comp Cas 665 (SC) in the matter of Alchemist Ltd. and another vs. State Bank of Sikkim and others (para 44):

"From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this court, it is clear that for the purpose of deciding whether facts averred by the petitioner-appellant, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the could would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that."

18 While contending that the entire facts pleaded in support of the cause of action should constitute a cause so as to empower the court to decide a dispute, Mr. A.L. Somayaji, learned Senior Counsel has relied on a judgment of the Supreme Court reported in (2002) 1 SCC 567 in the case of Union of India and others vs. Adani Exports Limited and another (para 17)

"It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute a cause so as to empower the court to decide a dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgment that each and every fact pleaded by the respondents in their application does not ipso facto within the court's territorial jurisdiction

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the list or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned. If we apply this principle then we see that none of the facts pleaded in para 16 of the petition, in our opinion, falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad."

19 Countering the arguments made by Mr. Habibullah Badsha, Mr. P.S. Raman appearing for the petitioner has contended that the second respondent Tribunal is only a statutory body and not created pursuant to Article 323-B of the Constitution of India and as such, the contention made by the former that the writ petition can lie only before a Division Bench cannot be sustained.

20 I have given due consideration to the rival contentions of the learned Senior Counsel for the parties and the judgments relied on by them in support of their arguments.

21 The points which emerge for consideration in these writ petitions are as follows:

a. Whether this Court has got territorial jurisdiction to entertain these writ petitions?

b. Whether the interim order granted by the Tribunal on 19.03.2007 in P. No.291(c) of 2006 tantamouts to granting of a final order?

c. Whether the impugned order dated 19.03.2007 in P. No.291(c)of 2006 passed by the Tribunal is hit by the principle of res judicata in view of its order dated 24.01.2007

d. Whether the Tribunal is correct in its approach in ordering the execution petition?

WEB COPY

22 As far as the first point for consideration is concerned, it is no doubt trite, as has been held by the Supreme Court in its catena of judgments, that even if a fraction of a cause of action has arisen within the territorial jurisdiction of a court, that is sufficient for the court concerned to entertain a petition which cannot be dismissed on the ground that the court does not have territorial jurisdiction to deal with the said petition. In the instant case, admittedly, while the petitioner is having its registered office in Chennai and carrying on its business in Chennai, the first respondent is having its office in New Delhi and also the Tribunal which has passed the impugned orders is housed in New Delhi. Mr. Habibulla Badsha, learned Senior Counsel for the first respondent, by placing reliance on the judgment reported in

https://hcservices.ecourts.gov.in/hcservices/

AIR 1997 SC 1125 (supra) has vehemently contended that since the Tribunal is located in Delhi, the present petitions which have been filed before this Court and that too before a Single Judge, cannot be maintained on account of lack of territorial jurisdiction by this Court. While attacking this contention of Mr. Habibullah Badsha, Mr. P.S. Raman has contended that the judgment relied on by the former cannot be made applicable to the facts of this case since the Tribunal is not a body instituted under Article 323A or 323B of the Constitution but under a statute and this reply given by Mr. Raman sounds to be convincing. Further, it is to be seen that the reach of the package offered by the petitioner is not restricted to one particular area only. Rather, it is going to have a nation-wide coverage. That apart, as per the direction of the Tribunal, the petitioner and the first respondent have also held a meeting in Chennai to come to an amicable settlement, but in vain and this is not disputed by the first respondent. In this case, the petitioner has pleaded every aspect of cause of action and the facts pleaded do have some nexus and relevance with the issue involved in this case. Moreover, the ultimate relief if it is granted, it will have an effect of giving signals from the channels owned by Sun TV. Therefore, there is at least a part of cause of action which does offer jurisdiction to this Court as per clause 2 of the Article 226 of the Constitution of India.

23 From the above series of events, it has to be held that a part of cause of action has certainly arisen for the petitioner to move this Court by way of the present writ petitions questioning the interim order dated 19.03.2007 passed by the Tribunal. In that view of the matter, the first question for consideration is answered in affirmative; as such, let me proceed to answer the other two questions.

24 While coming to the second point for consideration as to whether the order passed by the Tribunal on 19.03.2007 tantamounts to granting of final order at the interim stage, it would be useful to have a look at the main reliefs sought in Petition No.291(c) before the Tribunal which are necessary for answering the above question and the same read as under:

> a. to declare the respondent herein as defaulter in terms of Government of India Order dated 01.06.2005 having refused access of their channels on a non-discriminatory basis to the petitioner as laid down in the applicable regulations of TRAI; and
>
> b. direct the respondent to discharge their statutory obligations under the Interconnection Regulation of TRAI dated 10.12.2004 to provide signals of its channels to the petitioner on reasonable terms and conditions which are found to be fair, non-discriminatory and reasonable by this Hon'ble Court.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

25 Further, it would also be necessary to refer to the finding portion of the order dated 19.03.2007 passed by the Tribunal which reads thus:

> "At this stage it is difficult to say whether the alleged agreement of the respondent with Dish TV is real or sham. However, we cannot lose sight of the fact that the arguments that Dish TV is still not showing any of the channels of respondent in spite of alleged agreement of November 2006, has not been controverted by the counsel appearing for the respondent. Therefore, for present purposes we can take it as correct that Dish TV is not showing any of the respondent's channels on its DTH platform. This casts a doubt about the argument that another DTH operator, i.e. Dish TV has taken the entire bouquet of respondent.
>
> The learned counsel for the respondent also argued that the petitioner is carrying bouquets of channels of other broadcasters and therefore, petitioner should have channels of respondent also in bouquet only. In our view, this argument is totally misconceived. The arrangement of the petitioner with each distributor is a matter of negotiation between the parties and whatever may be the arrangement with a particular party it cannot be said that same arrangement has to be with another party. Moreover, the respondent has not given any concrete instance in this behalf except making a bald statement. The respondent is offering its channels on a-la-carte basis as per affidavit quoted above, which leaves no scope for such an argument. This argument is therefore, rejected.
>
> Next, it was argued on behalf of the respondent that allowing petitioner to take channels of respondent on a-la-carte basis will create a discriminatory regime because the respondent is not offering its channels on that basis to any other party. This argument is factually contrary to the stand of the respondent in its own affidavit which has been quoted hereinbefore. Moreover, the respondent has not placed any material before us nor anything was referred to in support of the stand that it was offering its channels only as a bouquet/package to its customers. Such argument being advanced without laying any factual foundation for it, is neither here nor there. So far as the question

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

> of rates of the channels of the respondent is concerned, the respondent has admittedly given these rates to the TRAI also and the rates given on page 154 of the Paper Book were not even disputed by the counsel appearing for respondent. Therefore, as an interim measure, we direct the respondent to make available signals of all its channels to the petitioner on a-la-carte basis at 50% of its declared rates. It is made clear that view expressed in this order is only for purposes of passing this interim order and it is not an expression of final opinion on the controversy between the parties in this case."

26 From a reading of the above, it is clear that the main relief sought by TATA which is numbered as "b" has been granted as an interim measure. In other words, one of the main reliefs sought by TATA has been granted by the Tribunal by going into the merits of the case after exhaustively discussing various matters such as supply of signals as mentioned in page 154 of paper book as a bouquet, fixation of price for the supply of those channels, etc. which have to be discussed only at the stage of final hearing for grant of final order. I am therefore of the considered opinion that the Tribunal, without going into the settled legal proposition that the main relief cannot be granted at the interim stage, has granted the main relief in the guise of granting an interim order and this certainly tantamounts to the effect of granting a pre-trial decree. This opinion of mine is supported by a Division Bench judgment of this Court reported in 2007 (3) CTC 11 which is relied on by the learned Senior Counsel for the petitioner (supra) in which I was a member. Therefore, I am constrained to hold that the order passed by the Tribunal on 19.03.2007 directing Sun TV to make available signals of all its channels to TATA on a la-carte basis at 50% of its declared rates cannot be sustained and in that view of the matter, the order dated 19.03.2007 passed by the Tribunal is quashed. Accordingly, this question is answered in favour of the petitioner.

27 To decide the third point for consideration as to whether the order dated 19.03.2007 passed by the Tribunal is hit by the principle of res judicata in view of the Tribunal's order dated 24.01.2007, it would be useful to refer to the order mentioned latter which reads thus:

> "We have tried to explore the possibility that an interim order could be passed at this stage pending final hearing of the petition. It appears that the diversity of the stand of the petitioner and the respondent is so much that interim order is not possible. Dr. Singhvi, learned Senior Counsel appearing for the respondent has offered that the respondent can supply all the 20 channels listed at page 154 of the paper book to the petitioner @ Rs.85/- per subscriber per month. He submits that it is at this rate that the respondent is supplying signals

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

of all the 20 channels to the other DTH operator known as Dish TV/ASC. However, this offer is not acceptable to the petitioner. According to the learned counsel for the petitioner, the facts about the above offer are not correct.

The respondent has filed an additional affidavit with our permission in the Court today. List the matter for hearing on 14th February 2007."

28 A reading of the above order would make it amply clear that the Tribunal has worked out the possibility of granting an interim order and since that was not possible due to the diverse stand of the parties, the matter had been adjourned to 14.02.2007. To put it in the other way, what the Tribunal has done is, it has tried its level best to bring the parties to an amicable settlement. But, due to the diversified stand of the parties, there was no other option except to adjourn the matter. Thus, it is clear that no order, either interim or final, was passed and at the same time, the request for an interim prayer was not rejected and instead, the matter simply stood adjourned. In that view of the matter, it cannot be held that the impugned order dated 19.03.2007 passed by the Tribunal is in contravention to Section 11 of the CPC which deals with the principle of res judicata. Thus, the third point for consideration is answered in favour of the first respondent.

29 With regard to the fourth point for consideration as to whether the Tribunal is correct in ordering the execution petition, this Court holds that since the impugned order dated 19.03.2007 is quashed, the Execution Application which is a consequence of the order dated 19.03.2007 cannot be sustained and so also the order of the Tribunal therein.

30 Though it is made clear by this Court that the impugned order dated 19.03.2007 is not hit by res judicata, considering the fact that final hearing of the matter is to be taken by the Tribunal in a few days' time, i.e. on 12.07.2007 as per the direction of the Supreme Court in S.L.P.(Civil) No.6993 of 2007 dated 27.04.2007, the petitioner and the first respondent are directed to maintain status quo as on date till the matter is taken up by the Tribunal for final hearing on 12.07.2007.

In fine, both the writ petitions are allowed. No costs. Consequently, connected M.Ps are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

cad

To

The Registrar
The Telecom Disputes Appellate Tribunal
New Delhi.

2 cc To M/s.S.Ramasubramanian & Associates, Advocate, SR.40862.
2 cc To Mr.P.Wilson, Assistant Solicitor General, SR.40419, 40420.

W.P. Nos.12826 and 12827 of 2007

JRG(CO)
RVL 10.07.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/